

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

AMERICAN FEDERATION OF TEACHERS,)	
LOCAL 691,)	
)	
Petitioner,)	
)	
v.)	Public Case No. 99
)	
THE SCHOOL DISTRICT OF KANSAS CITY,)	
MISSOURI, (Security Employees))	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

A petition was filed in this matter by the American Federation of Teachers, Local 691, (hereinafter referred to as petitioner) to represent security officers employed by the School District of Kansas City, Missouri. The statutory authority required for the State Board of Mediation to render a decision with respect to issues relating to appropriateness of bargaining units is found in Section 105.525 RSMo. 1969.

The term "appropriate unit" is defined in Section 105.500 RSMo. 1969, as meaning

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;"

The sole issue in dispute before the State Board of Mediation in the instant case is whether a unit of security officers represented by the petitioner constitutes an appropriate unit when the same local is recognized as the representative of other types of rank and file employees including teachers, counselors, paraprofessionals, school

librarians, consultants, home school coordinators, nurses, accompanists, and miscellaneous urban education employees.

It is the contention of the School District of Kansas City, Missouri, (hereinafter referred to as the respondent) that a unit of security employees represented by the petitioner, is an inappropriate unit in that security employees lack a clear and identifiable community of interest with other employees represented by the petitioner, and that representation of the security employees by a union which also represents teachers and other rank and file employees would be against precedent of past State Board of Mediation decisions, would be contrary to an analogous rule followed by the National Labor Relations Board as set forth by the National Labor Relations Act, Section 9(b), and would be against the public interest by presenting danger of personal injury or damage to school employees, patrons, children and property.

STATEMENT OF FACTS

The evidence adduced at the hearing showed that the respondent employs security officers, both male and female, for the purpose of protecting school property, personnel and students from harm. The authorization for the commissioning of the security officers by the Board of Police Commissioners, Kansas City, Missouri, is authorized by Section 84.720 RSMo. 1969.

The security officers employed by the respondent are licensed as private watchmen and are not qualified as such to carry firearms nor do they wear uniforms. The officers have no independent arrest authority; in situations where a transgression of the law is committed in their presence, the officer is to detain the individual until a uniformed Kansas City, Missouri, policeman arrives, at which time the latter may take the suspect into custody. The security officer in such instances may act as complaining

witness, however the final decision as to whether prosecution will be conducted is the responsibility of the principal, and not the security guard.

CONCLUSIONS OF LAW

Section 105.510 RSMo. 1969, states:

"Employees, except police, deputy sheriffs. Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. . ."

The respondent has raised the issue that the security officers may not join a labor organization because they are in essence police officers and therefore barred from joining said organization by the language of Section 105.510 RSMo. 1969 supra.

A police officer has been defined as a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crime, and enforcing laws, the body of men by which municipal laws and regulations of the city, town, or district are enforced. Burke v. State 47 S.E.2d 116 (1948).

The security guards are watchmen, not police officers, and as such do not have the authority to enforce the law by means of arrest nor may they carry firearms. Respondent's contention that the security guards are "police" has no merit.

The Board is deeply concerned with the main issue of this case, which is whether representation of security guards by a union which also represents other rank and file employees of the respondent is appropriate.

The respondent urges this Board to follow Section 9(b)(3) of the National Labor Relations Act which specifically states the National Labor Relations Board

". . . shall not. . . decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the

employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

The purpose of establishing this rule for the NLRB to follow was to insure that during strikes or labor unrest an employer would have available loyal plant-protection employees who would enforce rules for the protection of both persons and property. See McDonald Aircraft Corp. 109 NLRB 967, 34 LRRM 1489 (1954).

In further support of his contention the respondent cites NLRB v. Jones & Laughlin Steel Corp., 154 F.2d 932 (6th Cir. 1946) which held:

"...In case of industrial unrest and strikes on the part of the production employees, the obligations of the plant guards to the municipality and state would be incompatible with their obligations to the Union which, since it represents production employees, authorizes and directs the strike."

Respondent directs this Board's attention to Public Case No. 8, Division of Mental Health, State of Missouri, and Missouri State Council 72, A.F.S.C.M.E., and Public Case No. 48, The School District of Kansas City, Missouri, and Service School Employees Union, Local 12, in which this Board excluded school security officers from an appropriate unit. In the matter presently before us petitioner is not attempting to group the security guards with other employees, but has petitioned for a separate unit of guards, therefore the aforementioned Board decisions are not controlling.

The petitioner cites the case of Yonkers Raceway, Inc., New York State Labor Relations Board, 63 LRRM 1098, which held in pertinent part:

"Over the years, this Board has held that a labor organization's representation of rank and file employees does not, and cannot, preclude it from seeking certification as the bargaining representative of protection or supervisory employees. We have pointed out that the Act vests in the employees the right to decide which labor organization, if any, shall represent them, and that the Board is not empowered to substitute its judgement for that of the employees. We also have noted that the conflict of loyalties, allegedly resulting from the selection of the same representative by supervisory or protection employees and by rank and

file employees, is a misnomer; that it arises, if at all, from the employees' fundamental right of association, which exists independent of statute; that the denial of all rights under the Act to one of the two groups of employees provides no solution; and that any problems which may arise can and should be adjusted and resolved in the collective bargaining process, when, and if, that eventuality occurs."

It is the responsibility of this Board to consider the public interest as a material factor in selecting appropriate units and we are fully aware of the problems that might arise if security guards are represented by the petitioner.

However, this Board is obliged by law to determine the appropriate unit and having done so shall proceed to the required election. To follow the reasoning of the respondent would result in permitting this Board to control the choice of representation. The statute gives no such power to the Board. We can only decide the appropriate unit -- not conditionally decide it.

DECISION

Pursuant to Section 105.525 RSMo. 1969, the State Board of Mediation finds the following unit to be appropriate:

All security employees (those carrying cards entitled Certificate of Registration of Private Watchmen) employed by the School District of Kansas City, Missouri, but excluding supervisory personnel (those carrying cards entitled Certificate of Registration of Private Policemen).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible

to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by American Federation of Teachers, Local 691.

It is hereby ordered that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 30th day of November, 1976.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn, Chairman

/s/ Stanley W. Cox
Stanley W. Cox, Employer Member

/s/ Richard Mantia
Richard Mantia, Labor Member